SINGAPORE REPORTS

Sim Jwee Kiat v City Car Rentals & Tours Pte Ltd

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 102 OF 1987
LAI KEW CHAI, CHUA AND RAJAH JJ
19 SEPTEMBER 1990

Contract — Hire of motorcar — Accident — Negligence of hirer — Limitation of liability clause — Applicability of clause

Bailment — Bailee — Duty to take reasonable care — When bailee not liable for loss

By a hiring agreement dated 3 April 1990, the respondent hired a Mercedes Benz to the appellant for four days. The car was damaged in a road accident near Gemas, Malaysia and the respondent claimed damages of $18,366.90. The trial judge found the appellant to have been negligent in driving the car. The hire agreement, however, contained a clause limiting the liability of the respondent to $1,000 in the event of vehicle collision damage. The trial judge however found that the clause did not apply as the appellant had been negligent and ordered him to pay damages. The appellant appealed.

Held, allowing the appeal:

(1) The appellant paid a vehicle collision damage waiver of $10 per day, which in a sense was like payment of an insurance premium, to waive vehicle damages or vehicle collision damage.

(2) Where the clause limiting liability does not specify any other head of liability it should usually be construed as extending to negligence.

(3) At law, a hirer under a contract of bailment has a contractual duty to take reasonable care of the car and is not liable for loss or damage unless caused by his negligence. He obviously does not require any waiver or exemption, total or partial, from the bailor except for any liability in negligence. The respondent, therefore, in paying the vehicle damage waiver of $10 per day was paying for the waiver of his liability for negligence.

(4) It was, therefore, the intention of both the appellant and respondent that the respondent would relieve the appellant of all liability for damage in excess of $1,000 out of any collision of the car if the appellant was negligent.

Cases referred to

1 *Alderslade* v *Hendon Laundry Ltd* [1945] KB 189 (folld)
2 *Rutter* v *Palmer* [1922] 2 KB 87 (refd)
3 *Hollier* v *Rambler Motors Ltd* [1972] 2 QB 71 (folld)
4 *Lamport & Holt Lines* v *Coubro & Scrutton (M & I) Ltd* [1982] 2 Lloyd's Rep 42 (folld)
5 *Ritchie's Car Hire Ltd* v *Bailey* (1958) 108 LJ 348 (folld)
6 *Moons Motors Ltd* v *Kiuan Wou* [1952] 2 Lloyds Rep 80 (CA) (folld)

Mohamed Abdullah for the appellant.
Cheah Kok Lim for the respondent.

Cur Adv Vult

Lai Kew Chai J (delivering the judgment of the court): This appeal concerns the question of construction as to whether the hirer of a car under a car hiring agreement was entitled to limit his liability to $1,000 if he had damaged the car when negligently driving it. In the High Court it was held that cl 5(b) of the agreement did not apply to relieve the appellant of his liability for negligence in excess of $1,000. Interlocutory judgment was entered against the appellant and it was ordered that damages be assessed. Not satisfied with the judgment the appellant appealed.

The factual matrix may be briefly recited. By a hiring agreement dated 3 April 1980 the respondent hired a Mercedes Benz to the appellant for a period of four days at the rate of $180 per day. The appellant hired the car for a trip to West Malaysia in the course of which he, on 4 April 1980, met with an accident near Gemas, Malaysia. The car was damaged and the respondent claimed as damages the sum of $18,366.90 with interest. At the trial below, it was found as a fact by the learned trial judge that the appellant was negligent in driving the car. Against that finding of fact there is no appeal.

As this appeal turns on the interpretation of the car hiring agreement, we would now refer to it. The car hiring agreement in question is contained in a printed form issued by the respondent. The form is all in one sheet with printed terms on both sides. The front page has many boxes and columns to fill in the particulars of the car and the hirer, the hire rates and, inter alia, it stipulates whether personal accident insurance and passenger risk are accepted or declined. As third party liability motor insurance is compulsory by law, there is no provision for it. The appellant as the hirer had signed on the front page to confirm his agreement with 'all the terms, conditions and charges on both sides of this agreement.' The conditions of the agreement are printed overleaf.

It is significant to note the provisions of a particular column on the front page where it was confirmed that 'Veh & Vehicle Collision Damage Waiver' was accepted by the appellant at the rate of '$10 per day'. It is also, in our view, significant to note that the respondent as the owner of the car would be paid $3,650 per year on the assumption, of course, that the car is hired out for an entire year; even if the car is hired out for say half a year, the owner would receive the not inconsiderable sum of $1,825 in consideration of granting a waiver for their claims in respect of any 'vehicle ... damage' or 'vehicle collision damage'. This payment by a hirer to the owner could have been paid by a hirer to an insurance company for an insurance against damage to a hired car arising out of the negligence of a hirer. It was in fact paid to the respondent as the owner of the car. In that sense the payment at the rate of $10 per day is like payment of an insurance premium. What kind of such vehicle damage or vehicle collision damage was agreed to be waived by the respondent in accepting the sum at the rate of $10 per day is the issue of interpretation which has to be resolved in this appeal.

We now turn to the conditions of the hiring agreement printed. Under cl 1 the appellant agreed that he would 'return said vehicle, together with all tyres, tools, accessories and equipment in good order'. This clause, in our view, merely reiterated the common law obligations of the appellant. By cl 3 a number of the usual prohibitions, such as not to use the car to carry passengers or goods for reward, in the operation of the car is set out.

The crucial provisions in the hiring agreement, apart from but in addition to the agreement of waiver by the respondent as evidenced in the column to which we had alluded, are set out in paras (b) and (c) of cl 5 of the agreement. The relevant lettered paragraphs read as follows:

> 5 That hirer expressly acknowledge personal liability to pay owner on demand:
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> ...
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> (b) Vehicle and vehicle collision damage waiver and miscellaneous charges at the rate specified overleaf unless hirer had purchased in advance the 'vehicle and vehicle collision damage waiver' insurance, in which case, owner shall relieve hirer of all liability for damage arising out of collision upset, malicious mischief, vandalism, falling objects, missiles, glass breakage, fire, smoke, water or smudge in excess of S$1,000. Hirer shall nevertheless reimburse owner upon receipt of its invoice the first S$1,000 being the excess provided of any loss or damage arising out of each incident or event.
>
> (c) The full amount of all costs, or damages incurred or sustained by the owner as a result of:
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> (i) theft;
> (ii) conversion by any of the hirer's drivers, agents or authorized operators;
> (iii) the deliberate act or omission of the hirer, his servants or agents;
> (iv) any violation of the terms or conditions of this agreement;
> (v) any reckless, abusive, careless or inconsiderate handling of the said vehicle by the hirer, his servants or agents;
> (vi) collision or upset loss or damage caused by the negligent operation of the said vehicle under the control of the hirer, his servants or agents.
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> ...

Thean J in his judgment set out correctly in our view the canons of construction. He began by quoting the famous passage of Lord Greene MR in *Alderslade* v *Hendon Laundry Ltd*[1] at p 192 as follows:

> The effect of those authorities can I think be stated as follows: where the head of damage in respect of which limitation of liability is sought to be imposed by such a clause is one which rests on negligence and nothing else, the clause must be construed as extending to that head of damage, because it would otherwise lack subject matter. Where, on the other hand, the head of damage may be based on some other ground than that of negligence, the general principle is that the clause must be confined in its application to loss occurring through that other cause, to the exclusion of loss arising through negligence. The reason is that if a contracting party wishes in such a case to limit his liability in respect of negligence, he must do so in clear terms in the absence of which the clause is construed as relating to a liability not based on negligence

It will be seen that the first limb of the formulation of Lord Greene MR stipulates that if there is no other head of liability than negligence, the clause 'must' be construed as extending to negligence. Since this is a canon of construction, and the process of construction of a document always requires a consideration of the expressions used and all relevant circumstances, the first limb of the formulation in our view might have been too rigidly stated. Thus, in *Rutter* v *Palmer*[2] which was considered by Lord Greene MR in *Alderslade*,[1] Scrutton LJ had said at p 92: '... if the only liability of the party pleading the clause is a liability for negligence, the clause will more readily operate to exempt him.' We are of the view that in these circumstances the word 'must' should be read as 'should usually': see *Hollier* v *Rambler Motors (AMC) Ltd*[3] per Salmon LJ and *Lamport & Holt Lines* v *Coubro & Scrutton (M & I) Ltd*[4] per May LJ. Subject to this refinement we accordingly agree with Thean J that the relevant law of construction is correctly summarized in paras 878 and 879 of *Chitty on Contracts* (25th Ed), which does contain this refinement and which we do not think are necessary to reproduce.

We must now consider Thean J's application of these principles of construction in this case. Counsel for the appellant submitted that cl 5(b) when objectively construed would limit the appellant's liability to $1,000 for any damage caused to the car by reason of the appellant's negligence. This submission did not find favour with Thean J whose construction of cl 5(b) was expressed in the following terms:

> In this case, para (b) of cl 5 relieves the defendant 'of all liability for damage arising out of collision ...' but does not go further to define the cause of collision; in particular the clause does not say after the word, 'collision', 'howsoever caused'. Though the words 'all liability', are wide, they are limited by the causes that follow: 'arising out of collision, upset, ...' Immediately following is para (c) which expressly covers, inter alia, instances of negligence: see instances in sub-paras (v) and (vi) of para (c). Paragraph (b) also spells out causes or origins for loss or damage not relating to negligence in respect of which the hirer could be held liable. In my opinion, the two paragraphs must be so construed as to give sense and effect to each, and the cause of damage, 'collision', in para (b) must be reconciled with the cause of damage in para (c)(v), namely: 'collision ... caused by negligent operation of the said vehicle under the control of hirer, ...' In so far as collision is concerned, para (b) applies to relieve the hirer of all liability arising from collision not caused by negligence of the hirer, and para (c)(v) applies and imposes a liability on the hirer for damage arising from collision caused by the negligent operation of the vehicle under the control of the hirer.

We have carefully considered the reasoning of the learned judge in the interpretation of the limitation of liability

clause in the particular context of cll 5(b) and 5(c) within the four corners of the hiring agreement and in the light of the commercial matrix of the transaction. Its interpretation is one of some difficulty bearing in mind the frailty of the language used. But with respect to Thean J we have come to the conclusion that any ordinary person like the respondent, as the car rental company, would have thought and it was the common intention of both appellant and respondent that the respondent would relieve the appellant of all liability for damage in excess of $1,000 arising out of any collision of the car if the appellant was negligent.

Our reasons are as follows. First, by the words within the box appearing on the first page, the respondent as the owner of the car had offered to waive any claim for vehicle damage and vehicle collision damage. That offer was 'accepted' by the 'x' sign indicated within the box. The acceptance was accompanied by the appellant's payment of $10 per day for the duration of the hire. At law, a hirer under a contract of bailment has a contractual duty to take reasonable care of the car and is not liable for loss or damage to the car unless such loss or damage is caused by his negligence: see *Ritchie's Car Hire Ltd* v *Bailey*[5] where a car hirer was held not liable for accident unless it was caused by his act or default: the hirer's avoidance of a cat and hitting a tree was held to be inevitable accident; *Moons Motors Ltd* v *Kiuan Wou*[6] and 2 *Halsbury's Laws of England* (4th Ed) para 1558. Accordingly, a hirer is not liable for any loss or damage to a chattel under bailment if such loss or damage is due to inevitable accident or an act of God. He obviously does not require any waiver or exemption, either total or partial, from the bailor except for any liability for negligence. In our view, the appellant was paying for the waiver of his liability for negligence within the first limb of Lord Greene's formulation in *Alderslade*.[1] Thean J stated: 'In so far as collision is concerned, para (b) applies to relieve the hirer of all liability arising from collision not caused by negligence of the hirer ...'. With respect, there is at law no liability to relieve and which attaches to a bailee for a collision unless it is caused by the negligence of the bailee.

Secondly, we agree with Thean J that cl 5(b) in its entirety must be reconciled, wherever possible, with cl 5(c). There is in our view no difficulty in reconciling cll 5(c)(i) to (iv) with cl 5(b). Those sub-paragraphs deal with either an offence or wilful conduct on the part of the hirer which is distinct and separate from negligence. In our view, cl (5)(c)(v) also deals with recklessness or conduct of a hirer more serious and culpable than mere negligence: it does not deal with any negligent handling of the car. Further, the use of the word 'handling' appears to be equivalent to the 'driving' of the car rather than the other activities of a hirer in relation to the car. However, we agree that cl 5(c)(vi) does, on first reading, present some difficulties if the phrase 'negligent operation' of the car includes the negligent driving of the car. On reflection, we are of the view that in the context of the whole hiring agreement, cl 5(c)(vi) deals with loss or damage caused by any negligent operation other than the driving of the car. There is some warrant in taking the view that the use of the word 'handling' in cl 5(c)(v) in contrast with the use of the word 'operation' in the immediately following cl 5(c)(vi) suggests that different meanings were intended in the use of the two words by the parties. There are many matters in the operation of the car, other than in the driving of it, that can go wrong and cause loss or damages, such as the failure to replace the engine oil which had been completely depleted or had gone below the safe level or the failure to keep the safe level of the brake fluid. Accordingly, when one reads the provisions of cl 5(c) as dealing with more culpable conduct of a hirer other than negligence, the subject matter dealt with there is different and separate from the subject-matter of negligent driving dealt with by the limitation of liability provisions of cl 5(b).

For these reasons we would allow the appeal with costs here and below.

Appeal allowed

Solicitors: *Murphy & Dunbar; Low Yeap & Co.*

Reported by *Mathavan Devadas*